

FEB 23 2009

Board of Vocational Nursing
and Psychiatric Technicians

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8 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. VN-2006-2255

12 **EILEEN SUMI MCKAY**
105C Elbridge Avenue
13 Cloverdale, California 95425

ACCUSATION

14 Vocational Nurse License No. VN 182730

15 Respondent.

16
17 Complainant alleges:18 **PARTIES**

- 19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
20 Accusation solely in her official capacity as the Executive Officer of the Board of Vocational
21 Nursing and Psychiatric Technicians, Department of Consumer Affairs.
- 22 2. On or about November 12, 1997, the Board of Vocational Nursing and
23 Psychiatric Technicians issued Vocational Nurse License Number VN 182730 to Eileen Sumi
24 McKay (Respondent). The Vocational Nurse License was in full force and effect at all times
25 relevant to the charges brought herein and will expire on June 30, 2009, unless renewed.

26 **JURISDICTION**

- 27 3. This Accusation is brought before the Board of Vocational Nursing and
28 Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the

1 following laws. All section references are to the Business and Professions Code (Code) unless
2 otherwise indicated.

3 STATUTORY PROVISIONS

4 4. Section 2875 of the Code provides, in pertinent part, that the Board may
5 discipline the holder of a vocational nurse license for any reason provided in Article 3
6 (commencing with section 2875) of the Vocational Nursing Practice Act.

7 5. Section 118(b) of the Code provides, in pertinent part, that the expiration
8 of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action
9 during the period within which the license may be renewed, restored, reissued or reinstated.
10 Under section 2892.1 of the Code, the Board may renew an expired license at any time within
11 four years after the expiration.

12 6. Section 2878 of the Code states, in pertinent part:

13 "The Board may suspend or revoke a license issued under this chapter [the
14 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

15 "(a) Unprofessional conduct

16 ". . . .

17 "(f) Conviction of a crime substantially related to the qualifications, functions,
18 and duties of a licensed vocational nurse, in which event the record of the conviction shall be
19 conclusive evidence of the conviction. . . ."

20 7. Section 2878.5 of the Code states:

21 "In addition to other acts constituting unprofessional conduct within the meaning
22 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person
23 licensed under this chapter to do any of the following:

24 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a
25 licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or
26 administer to another, any controlled substance as defined in Division 10 of the Health and
27 Safety Code, or any dangerous drug as defined in Section 4022.

28 "(b) Use any controlled substance as defined in Division 10 of the Health and

1 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an
2 extent or in a manner dangerous or injurious to himself or herself, any other person, or the public,
3 or to the extent that the use impairs his or her ability to conduct with safety to the public the
4 practice authorized by his or her license. . . ."

5 8. Section 490 of the Code provides, in pertinent part, that the Board may
6 suspend or revoke a license when it finds that the licensee has been convicted of a crime
7 substantially related to the qualifications, functions, or duties of a licensed vocational nurse.

8 9. Section 2878.6 of the Code states:

9 "A plea or verdict of guilty or a conviction following a plea of nolo contendere
10 made to a charge substantially related to the qualifications, functions and duties of a licensed
11 vocational nurse is deemed to be a conviction within the meaning of this article. The board may
12 order the license suspended or revoked, or may decline to issue a license, when the time for
13 appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order
14 granting probation is made suspending the imposition of sentence, irrespective of a subsequent
15 order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw
16 his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
17 dismissing the accusation, information or indictment."

18 10. California Code of Regulations, Title 16, section 2521, states, in pertinent
19 part:

20 "For the purposes of denial, suspension, or revocation of a license pursuant to
21 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or
22 act shall be considered to be substantially related to the qualifications, functions or duties of a
23 licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a
24 licensed vocational nurse to perform the functions authorized by his license in a manner
25 consistent with the public health, safety, or welfare. . . ."

26 11. Section 493 of the Code states, in pertinent part:

27 "Notwithstanding any other provision of law, in a proceeding conducted by a
28 board within the department pursuant to law to deny an application for a license or to suspend or

revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question. . . ."

12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

13. **"Cocaine"** is a schedule II controlled substance, as designated by Health and Safety Code section 11055(b)(6), and a dangerous drug pursuant to Business and Professions Code section 4022 in that it can be lawfully dispensed only by prescription.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

14. Respondent is subject to disciplinary action under sections 2878(f) and 490 in that she was convicted of a crime substantially related to the duties, qualifications, and functions of a licensed vocational nurse as defined in California Code of Regulations, Title 16, section 2521. The circumstances are set forth in paragraph 15, below.

15. On or about September 5, 2007, in *People v. Eileen Sumi McKay*, Sonoma County Superior Court Case No. SCR-515793, Respondent was convicted by a plea of guilty of a misdemeanor violation of Penal Code section 273.5(a), Willful Infliction of Corporal Injury. Imposition of sentence was suspended and Respondent was placed on three years of formal probation under terms which included, but were not limited to, the completion of a 52-session batterer program. Respondent was also ordered not to use or possess alcohol and to submit to chemical testing. The offense occurred in Santa Rosa, California, on or about July 16, 2007

1 when Respondent, while under the influence of alcoholic beverages, assaulted her boyfriend
2 causing injuries to his face.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct: Use of Alcoholic Beverages in a Dangerous Manner)**

5 16. Respondent is subject to disciplinary action under sections 2878(a) and
6 2878.5(b) in that she engaged in unprofessional conduct on two occasions when she used
7 alcoholic beverages to an extent or in a manner dangerous or injurious to herself, any other
8 person, or the public. The circumstances are set forth in paragraphs 15, above, and 17, below.

9 17. On or about January 30, 2008, Respondent was placed under arrest in
10 Santa Rosa Police Department Case No. 08-0001602 when she refused to drop a knife at officers'
11 request. On that date, officers were called to Respondent's location on a noise complaint. When
12 the officers attempted to talk to another individual on scene, Respondent, after taking several
13 large swigs of wine from the bottle, picked up a knife and yelled "I want to die! I want to die!
14 Kill me!" After commands from the two officers to drop the knife went unheeded, the officers
15 used a Taser to subdue Respondent. Officers later determined that Respondent had been drinking
16 heavily that evening. Respondent was then taken to a nearby hospital and placed on a welfare
17 hold pursuant to Welfare and Institutions Code section 5150.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct: Unlawful Administration of a Controlled Substance)**

20 18. Respondent is subject to disciplinary action under sections 2878(a) and
21 2878.5(a) in that she engaged in unprofessional conduct when she unlawfully possessed and self-
22 administered cocaine. The circumstances are set forth in paragraph 19, below.

23 19. On or about December 21, 2007, Respondent submitted to chemical
24 testing pursuant to her conditions of probation in *People v. Eileen Sumi McKay*, Sonoma County
25 Superior Court Case No. SCR-515793. On or about December 22, 2007, Respondent's chemical
26 test screened positive for cocaine. As a result of this conduct, Respondent suffered a violation of
27 probation in the above-entitled action, served eight days in the county jail, and was ordered to
28 attend substance abuse counseling.

1 **DISCIPLINE CONSIDERATIONS**

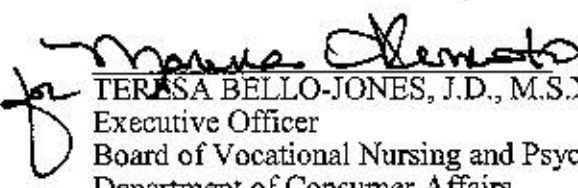
2 20. To determine the degree of discipline, if any, to be imposed on
3 Respondent, Complainant alleges that on or about May 29, 2003, in a prior action, the Board of
4 Vocational Nursing and Psychiatric Technicians issued Citation Number 03-0079-L against
5 Respondent and ordered her to pay a fine in the amount of \$500 for violating Business and
6 Professions Code section 2878, subdivisions (a) and (f), and California Code of Regulations,
7 Title 16, sections 2518.6(b) and 2521(e) (conviction of substantially related crimes). That
8 Citation is now final.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein
11 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
12 Technicians issue a decision:

- 13 1. Revoking or suspending Vocational Nurse License Number VN 182730,
14 issued to Eileen Sumi McKay;
- 15 2. Ordering Eileen Sumi McKay to pay the Board of Vocational Nursing and
16 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
17 pursuant to Business and Professions Code section 125.3; and
- 18 3. Taking such other and further action as deemed necessary and proper.
19

20 DATED: February 23, 2009

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22 
23 TERESA BELLO-JONES, J.D., M.S.N., R.N.
24 Executive Officer
25 Board of Vocational Nursing and Psychiatric Technicians
26 Department of Consumer Affairs
27 State of California
28 Complainant